

Sep 16 08 10:24a

Michael S. Gzybowski

RECEIVED

734-302-3302

P. 1

CENTRAL FAX CENTER

SEP 16 2008

PTO/SB/21 (08-08)
Approved for use through 09/30/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL
FORM

(To be used for all correspondence after initial filing)

Total Number of Pages in This Submission

6

Application Number

10/007,186

Filing Date

November 5, 2001

First Named Inventor

Yasushi KOHNO

Art Unit

3643

Examiner Name

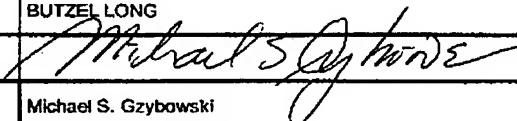
Andrea Valentini

Attorney Docket Number

121056-028

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD. Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Reply Brief
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	BUTZEL LONG		
Signature			
Printed name	Michael S. Gzybowski		
Date	September 16, 2008	Reg. No.	32,816

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Michael S. Gzybowski

Date September 16, 2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED
CENTRAL FAX CENTER

Appl. No. 10/007,186

SEP 16 2008

PATENT APPLICATION*IN THE UNITED STATES PATENT AND TRADEMARK OFFICE*

<i>Group</i>		}	<u>Certificate Under 37 CFR 1.8(h)</u>
<i>Art Unit:</i>	3643		I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via facsimile transmission on the date indicated below.
<i>Attorney</i>			
<i>Docket No.:</i>	121056-028		
<i>Applicant:</i>	Yasushi KOHNO		
<i>Invention:</i>	METHOD OF PREVENTING DEFECTIVE GERMINATION OR ROSETTE FORMATION OF SEED		
<i>Serial No.:</i>	10/007,186		
<i>Filed:</i>	November 5, 2001		
<i>Examiner:</i>	Andrea Valentini		

Certificate Under 37 CFR 1.8(h)

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via facsimile transmission on the date indicated below.

on September 16, 2008
Michael S. GzybowskiREPLY BRIEF

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed July 16, 2008, Appellant submits the present reply.

On page 6 of the Examiner's Answer the Examiner has stated that:

Ohkawa et al. was cited merely as support that the steps taught by the prior art of record of Coolbear and Khan would cause the result claimed by applicant i.e. preventing rosette formation.

The Examiner's point/statement is misleading.

Appl. No. 10/007,186

Ohkawa et al. does not disclose leaving plant seeds in a highly watery condition at a low temperature in a dark place.

Therefore, it cannot be said (and has not been established) that Ohkawa et al. demonstrates that the "steps taught by the prior art of record of Coolbear and Khan cause the result claimed by applicant."

In this regard, as set forth in Experiment 2 of Ohkawa et al. on page 226, the seeds are hydrated at a temperature of 28/23°C for up to three days and after this hydration step, the seeds are then stored at 3 or 10°C for five weeks under constant radiance.

This is completely different from Appellant's claimed process that requires, in part, leaving the plant seed to stand in a highly watery condition at a temperature of 0 °C to 15 °C in a dark place for a period of time of from several days to several months to inhibit defective germination and rosette formation of the plant seed, the dark place being sufficiently dark to prevent the plant seed from germinating.

Accordingly, the Examiner cannot rely upon Ohkawa et al. as evidence that the "steps taught by the prior art of record of Coolbear and Khan cause the result claimed by applicant."

The Examiner's statement that:

Ohkawa et al. was cited merely as support that the steps taught by the prior art of record of Coolbear and Khan would cause the result claimed by applicant i.e. preventing rosette formation.

infers that the combination of Coolbear and Khan teach Appellant's claimed invention.

On pages 6 and 7 of the Examiner's Answer the Examiner states:

Appl. No. 10/007,186

Coolbear teaches...a) leaving the plant seed to stand in a highly watery condition at a low temperature in a dark place for a period of time; leaving the plant seed in a highly watery condition the plant seed is immersed in water at a temperature of from 0°C to 15°C (Coolbear page 186, Method section "allowing seeds to imbibe distilled water at a constant 10°C in darkness.") b) drying the plant seed said drying takes place immediately after leaving the plant seed stand in the highly watery condition at the low temperature in a dark place (Coolbear, page 186, Methods section "On completion of the treatment time, germinated seeds (pregerminants) were removed and the remaining seeds dried in open Petri dishes at room temperature.").

The Examiner's own admission is that in Coolbear "the remaining seeds dried in open Petri dishes at room temperature."

There is no teaching that the seeds were dried in a dark condition.

The specific teaching of drying the seeds in "open Petri dishes at room temperature" cannot be taken as a teaching that the seeds were dried in a dark condition.

At best the reference to drying the seeds in "open Petri dishes at room temperature" strongly suggests that Coolbear failed to recognize any criticality related to the manner in which the seeds were dried.

This lack or criticality is born out in the third full paragraph on page 186 of Coolbear where it is noted that the study conducted by Coolbear only involved temperature effects on imbibed seeds, which temperature effects are contrasted to osmotic stress effects. There is no mention (or concern) of any study on drying the seed in a dark condition.

On page 8 of the Examiner's Answer the Examiner states that:

Kahn [sic.] teaches it is known to keep seeds in a chilled condition soaking in water in the dark for several days (Kahn [sic.] Col. 4 line 15).

Appl. No. 10/007,186

From this the Examiner concludes that:

It would have been obvious....to further modify the teachings of Coolbear with the teachings of Kahn [sic.] at the time to the invention for effective and efficient treatment of the seeds; enough tie for the seeds to imbibe the desired amount of water; and depending on desired storage time, seed variety, and planting cycle.

Khan is directed at a method of "inducing releasable dormancy in non-dormant plant seeds" which involves soaking the seeds in a "gibberellin synthesis inhibitor solution."

As explained in column 2, lines 22-39 the gibberellin biosynthesis pathway includes seventeen steps. By introducing a gibberellin synthesis inhibitor into the seeds (by soaking the seeds in a gibberellin synthesis inhibitor solution), Khan induces dormancy into the seeds.

The study performed by Khan is not at all related to that of Coolbear.

The drying discussed at column 3, lines 40-52 of Khan in drying step (c), in which the hydrated seeds are dried in a dark place in order to prevent the inactive condition (i.e. dormancy) of the seed, is carried out after the immersion step (a) and after the washing step (b).

Accordingly, the drying step (c) of Khan does not correspond to the drying step of the present invention in which the drying takes place immediately after leaving the plant seed to stand in the highly watery condition at the low temperature in a dark place.

Further, as the Examiner is no doubt aware, Khan fails to teach Appellant's steps (a) and (b).

Based upon it is submitted that Ohkawa et al. does not serve as evidence that the "steps taught by the prior art of record of Coolbear and [Khan] cause the result claimed by applicant."

Further, the combination of Coolbear and Khan does not render Appellant's claimed invention obvious.

Appl. No. 10/007,186

RECEIVED
CENTRAL FAX CENTER

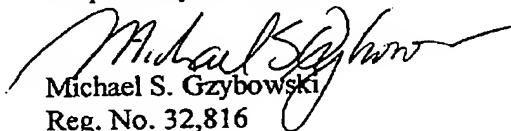
SEP 16 2008

CONCLUSION

For the reasons advanced above and for the reasons advanced in Appellant's Brief on Appeal, Appellant respectfully contends that the rejection of claims 1, 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over Ohkawa et al., Coolbear et al. and Khans improper because the examiner has not met the burden of establishing a prima facie case of obviousness of Appellants' claimed invention.

Reversal of the outstanding rejections on appeal is respectfully requested.

Respectfully submitted,


Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110

133361.1